

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 05-0518V

Filed: July 28, 2009

LYDIA JAKYMOWYCH,	)	
as parent of her son,	)	
ALEXANDER JAKYMOWYCH,	)	
	)	Petitioner's Motion for Decision
Petitioner,	)	Denial of Compensation
	)	
v.	)	
	)	NOT TO BE PUBLISHED
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

Ronald C. Homer, Boston, Massachusetts, for Petitioner.

Traci R. Patton, United States Department of Justice, Washington, D.C., for Respondent.

### DECISION<sup>1</sup>

#### **LORD, Special Master.**

On May 5, 2005, petitioner, Lydia Jakymowych, filed a Petition on behalf of her son, Alexander Jakymowych ("Alexander" or "the vaccinee"), pursuant to the National Vaccine Injury Compensation Program (the "Act" or "the Program").<sup>2</sup> Petitioner alleged that Alexander suffered mercury toxicity and attention deficit disorder (ADD) as a result of receiving thimerosal

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<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id.

<sup>2</sup> The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 et seq. (2006) ("Vaccine Act" or the "Act"). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Vaccine Act.

containing vaccines. Amended Petition (Pet.) at 1.<sup>3</sup> On April 7, 2008, petitioner filed a preliminary expert opinion, in which Dr. Marcel Kinsbourne concluded that the evidence “falls well short of a [mercury] level that could justify a causation opinion [implicating] exposure to mercury as a substantial contributing factor” to Alexander’s disorder. Petitioner’s Exhibit 25 at 2. Petitioner did not file another expert opinion.

Petitioner filed “Petitioner’s Revised Motion for a Decision Dismissing His Petition” (“Motion”) on July 8, 2009. In the motion, petitioner reasons that “an investigation of the facts and science supporting [t]his case has demonstrated” that petitioner is unable to prove entitlement to compensation. Motion at 1. Therefore, “to proceed further would be unreasonable and would waste the resources of the court, the respondent, and the Vaccine Program.” Id. at 2. Respondent does not object to petitioner’s motion.

To receive compensation under the Act, petitioner must prove that the vaccinee suffered an injury that either: 1) falls within the Vaccine Injury Table or 2) was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). In this case, petitioner does not allege a Table Injury. See Pet. at 1. Therefore, in order to prevail under the Act, petitioner must prove by a preponderance of the evidence that there exists: (1) a medical theory causally connecting the vaccinations to the alleged injury; (2) a logical sequence of cause and effect showing that the vaccinations were the reason for the injury; and (3) a showing of a proximate temporal relationship between the vaccinations and the alleged vaccine-related injury. Althen v. Sec’y of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005).

Based on careful review of the record as a whole and petitioner’s motion, petitioner is unable to establish that the vaccinee suffered a "Table Injury" or that his injuries were "actually caused" by a vaccination. Thus, **petitioner’s motion to dismiss is granted** and this case is **dismissed** for insufficient proof. The Clerk shall enter judgment accordingly.

**IT IS SO ORDERED.**

s/ Dee Lord  
Dee Lord  
Special Master

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<sup>3</sup> The petition does not identify the particular vaccines alleged to have caused the vaccinee’s injury or the date(s) such vaccines were administered.